

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CAVLAM BUSINESS LTD. and JEAN MAURICE
BERGERON,

08 CV 2225 (JGK)

Plaintiffs,

-against-

DECLARATION OF
JULIAN PROWSE BOSWORTH
IN SUPPORT OF DEFENDANTS'
MOTION TO DISMISS

CERTAIN UNDERWRITERS AT LLOYD'S,
LONDON,

Defendant.
-----X

I, Julian Prowse Bosworth, declare under penalty of perjury, in accordance with 28 U.S.C. § 1746, as follows:

1. I am the Claims Director of Underwriting Risk Services Ltd. ("URS"). I submit this affidavit in support of the defendants' motion to dismiss. I respectfully refer the Court to the Declaration of Wesley Martin Absolom dated May 27, 2008 for the background information describing URS' involvement in this matter on behalf of defendant underwriters and for the underwriting of the insurance coverage at issue.

The Claim

2. On December 21, 2004, URS was notified that the AMIRA had sunk on December 18, 2004 at her moorings at the Varadera Del Caribe Yard, Isla de Margarita, Venezuela. A true and correct copy of the insurance claim form, dated December 23, 2004, is attached hereto as Exhibit A.

3. Following notification, URS sent instructions to Frank B. Hill & Co., SA, a Lloyd's Agency surveyor in Venezuela, in order to determine the cause of the sinking, the extent of the damage, necessary repairs and estimated costs. URS advised the assureds' broker, International Marine Insurance Services ("IMIS"), by email that it had taken this action.

4. URS also engaged Kermit J. "Butch" Naylor of Southern Yacht Surveyors to examine the AMIRA. Mr. Naylor conducted his examination in Venezuela between May 17 and May 19, 2005. Later, a joint inspection was made by Mr. Naylor and Drew Haines of Murray & Associates, representing the assureds Cavalam and Mr. Bergeron, between July 25 and July 27, 2005. Mr. Naylor is now deceased.

5. Mr. Naylor provided two reports to URS, dated May 31, 2005 and July 6, 2005. In short, Mr. Naylor concluded that the AMIRA had not been maintained in a seaworthy condition. As he stated on the final page of the July 6, 2005 report: "I would summarize the cause of the sinking as a lack of needed maintenance which allowed a steady ingress of water in the vessel at all times and increasing while underway."

6. Based on Mr. Naylor's conclusions, the insurance claim was denied.

7. URS latterly engaged Mr. Mike Martyn-Johns of Burness Corlett, located in London, to inspect the vessel and advise on cause of loss, following the insured's repudiation of the claim denial.

8. The parties also dispute the value of the AMIRA and consequent amount of the claim.

9. The assureds have retained certain surveyors and consultants, none of whom are located in New York.

The English Proceedings

10. On May 5, 2006, Talbot 2002, on behalf of itself and the other members of the syndicates involved (the defendants herein), commenced an action in the High Court in London against Jean Maurice Bergeron, Cavalam Ltd., and Cavlam Business Ltd. In that action, underwriters seek a declaration that there is no coverage for the sinking of the AMIRA under the 2004 Certificate. A true and correct copy of the underwriters' Claim Form in the English proceedings is attached hereto as Exhibit B. On August 17, 2007 Mr. Bergeron filed an acknowledgment of service in the English proceedings, a copy of which is attached hereto as Exhibit C. Since that time, the English proceedings have essentially been stayed while the parties negotiated with respect to the claim.

11. In March 2008 the plaintiffs commenced this action against underwriters.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on the 27th day of May, 2008.


JULIAN PROWSE BOSWORTH

\\88888888\\2770\\21184

YACHTSURE CLAIM FORM

1. Assured

a) Name of Vessel: ALUCCA Policy No: U/03/08661
b) Name of Assured: Jean Maurice Bergson c) VAT registered? ON 732 554
and CAULAM Limited
d) Address: PO Box 6174 Nassau, Bahamas, Suffolk House, Paradise, Is.
Tel No: (home) _____ (work) 1-646-327-9871 (fax) 331-454-8685
Actually on trip Ex

2. Incident

a) Date: 18 Dec 04 Time: Morning

b) Exact location: Wharf of Varadero del Caribe Chacacharene
Margarita Isl. Venezuela

c) Wind speed: Wind direction:

d) Sea condition: ☒ Calm ☐ Moderate ☐ Rough ☐ Storm

e) Speed of vessel through water:

f) Name of person in control of vessel:

g) Number of years experience: Qualifications:

h) Number of people (including Skipper) on the vessel at the time of the loss:

i) For what purpose was the vessel being used? Moved to repaired's wharf

3. Cause and activity

CAUSE

- ☐ Theft ☐ Fire ☐ Collision
☐ Grounding ☐ Latent defect ☐ Heavy weather
☐ Wind damage ☒ Water damage ☐ Accidental loss
☐ Negligence ☐ Malicious damage ☐ Lightning
☐ Other (please state):

ACTIVITY

- ☒ Moored ☒ Repairer's yard ☐ Underway
☐ Road transit ☐ Delivery voyage ☐ Racing
☐ Anchored ☐ Laid up ashore ☐ Laid up afloat
☐ Demonstration ☐ Water-skiing ☐ Berthing/docking
- ☐ Other (please state)

4. Claimed Loss

- ☒ Actual Total Loss
☐ Constructive Total Loss
☒ Machinery damage
☐ Keel/rudder
☐ Propeller/shaft only

- ☐ * Tender/dinghy
☐ * Outboard motor
☒ * Personal effects
☒ * Equipment
☐ * Mast, spars, sails, rigging

- ☐ Trailer
☐ Salvage
☐ Hull-damage
☐ Third party liability
☐ Personal accident

NOTE For claims in respect of items above marked * please provide following details:- 1) description of item lost/damaged, 2) serial number/identifying markings/colour & size, 3) date of purchase and purchase price and 4) estimated cost of repairs/replacement

5. Third Party Liability

- a) Details of vessel/property damaged:
- b) Nature and extent of this damage:
- c) Name of Owner, Insurer and Policy No of third party:
- d) Did you accept liability ? If "yes" please give details:
- e) Were you liable ? If "yes" please give reasons:

6. Persons Notified

Please give details of any official who witnessed the loss, attended the scene or to whom the loss was reported

Name of authority: Philippe Philippart Location: Yacht Receivers Monaco
 Telephone Number: 53 295 291 3310 Contact name: Sci
 Date & Time reported: 18/12/04 Reference No:

7. Racing Risks

- a) Did the loss/damage occur whilst the vessel was racing or under starter's orders ? ☐ YES ☐ NO

If "yes" was it ☐ Club ☐ Offshore or major race

- b) Name of race: Length of race:

- d) Was there a protest ? ☐ YES ☐ NO If "yes" what was the outcome ?

- e) What is the full replacement value of the mast, spars, sails and rigging ?

Please forward a copy of the protest decision and all statements to your Broker with this form.

8. Witnesses

Please give names and telephone numbers of all crew, passengers and other persons who witnessed the incident.

Same as yard document

ix émis par: 33 (0) 1 45 48 68 25 LINCO/HOTEL ST SIMON le 28/12/04 20:25 A4 NORM Pg: 3/

9. Repairsa) Exact location that vessel can be inspected: Varadero del Caribe Margarita Venezuelab) Name of contact person: Philippe PhilippartTelephone No: 58 295 291 33 10 Fax No: 58 295 263 39 95c) Have estimates for the cost of repairs been obtained? ☐ YES ☒ NO

If "yes" please state estimated cost:

d) Name and address of repairer: (No possible repairs in Margarita D.V.)

Telephone No: Fax No:

Please forward a copy of the estimate to your Broker with this form

10. Generala) In respect of the risks covered by this insurance, has any loss, damage or liability arisen, whether insured or not, in the last ten years? ☒ YES ☐ NO

b) If "yes" please give full details of claim, date and costs incurred:

c) Is there any other insurance on the property under this claim ☐ YES ☒ NO

If "yes" please give details of policy and extent of coverage:

11. Full Details of Incident

Please give a detailed statement setting out the circumstances of the loss/incident IN FULL (please use the reverse of this page for continuation if necessary and/or a diagram showing circumstances if applicable).

AMICA has been Moved on Monday Dec 13th
2004 along the wharf of Regimen yard Varadero
del Caribe and (constant) sunk on Saturday
Dec 18th 2004 is the morning by yard manager
viewed

I/We hereby declare that the above answers and particulars are, to the best of my/our knowledge and belief, true and correct in every respect. I/We have not withheld any material information relative to this claim.

Signed: [Signature] Date: Dec 23rd 2004Full name/Name of company and status: Jean Maurice Bergeron CAULAM
Business Limited



Claim Form

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT
ROYAL COURTS OF JUSTICE

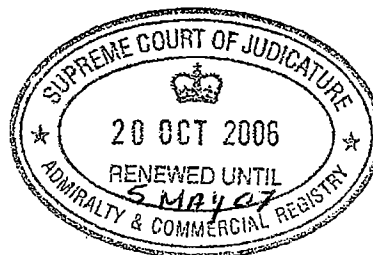
Claim No.

for court use only

Issue Date

Claimant(s)

Talbot 2002 Underwriting Capital Ltd of Lloyd's Syndicate No. 1183
(suing on behalf of itself for its proportion of 100.00% and as representative
Underwriter on behalf of all other members of Lloyd's Syndicate Nos. 2001, 2003,
2987, 2020 and 1084)



Defendant(s)

- (1) JEAN MAURICE BERGERON
PO Box SS 6174
Nassau
BAHAMAS
- (2) CAVALAM LTD
PO Box SS 6174
Nassau
BAHAMAS
- (3) CAVLAM BUSINESS LTD
1st Floor
Columbus Centre BLD
PO Box 901, Road Town
Tortola
BRITISH VIRGIN ISLANDS

Name and address of Defendant receiving this claim form

See above

Amount claimed	To be assessed
Court fee	1,700
Solicitor's costs	To be assessed
Total amount	To be assessed

The court office at the Admiralty and Commercial Registry, Royal Courts of Justice, Strand, London WC2A 2LL is open between 10am and 4.30pm Monday to Friday.
When corresponding with the court, please address forms or letters to the Court Manager and quote the claim number.

020 7695 1001

Acknowledgment of Service

Defendant's full name if different from the name given on the claim form



IN THE HIGH COURT OF JUSTICE QUEEN'S BENCH DIVISION COMMERCIAL COURT ROYAL COURTS OF JUSTICE	
Claim No.	2006 Folio 410
Claimant(s) (including ref.)	Talbot 2002 Underwriting Capital Ltd of Lloyd's Syndicate No. 1183 (suing on behalf of itself for its proportion of 100.00% and as representative Underwriter on behalf of all other members of Lloyd's Syndicate Nos. 2001, 2003, 2987, 2020 and 1084) (JSR/224962-36)
Defendant(s)	(1) Jean Maurice Bergeron (2) Cavalam Ltd (3) Cavlam Business Ltd
Defendant returning this form	Jean Maurice Bergeron

Address in England or Wales to which documents about this claim should be sent (including reference if appropriate)

c/o Ferman Law 27 Bruton Street London		if applicable	
		fax no.	
		DX no.	
Tel. no. 2074995702	Postcode W156QN	e-mail	

Tick the appropriate box

1. (I admit) (The Defendant admits) this claim ☐
2. ~~X~~ ☒ (The Defendant intends) to defend all of this claim
3. (I intend) (The Defendant intends) to defend part of this claim ☐
4. ~~X~~ ☒ (The Defendant intends) to contest jurisdiction

5. My date of birth is

If you file an acknowledgment of service but do not file a defence within ~~28 days~~ (28 days) of the date of service of the particulars of claim, and you have not indicated that you intend to contest jurisdiction, judgment may be entered against you.

If you do not file an application to contest the jurisdiction within ~~28 days~~ 28 days of the date of service of the acknowledgment of service, it will be assumed that you accept the court's jurisdiction.

*Claimant should alter as appropriate if the claim form is to be served out of the jurisdiction together with particulars of claim; see CPR rule 6.20

Signed

(Defendant's solicitor)
Marc Rowin
Attorney/Agent for
Jean Maurice Bergeron

Position or
office held
(if signing on behalf
of firm, company or
corporation)

8/17/07

Date